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* NOT ADMITTED IN D.C.

January 9, 1995

RECEIVED

JAN - 9 1995

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Comments in MM Docket No. 94-131
and PP Docket No. 93-253

DOCKET FILE COPY ORIGINAL

Dear Mr. Caton:

Transmitted herewith by Pepper & Corazzini, L.L.P., is an original and ten (10) copies of its Comments in MM Docket No. 94-131 and PP Docket No. 93-253. Should there be any questions in connection with these Comments, please communicate directly with the undersigned.

Respectfully submitted,



Michael J. Lehmkuhl

Enclosure

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JAN - 9 1995

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Amendment of Parts 21 and 74 of the)	
Commission's Rules With Regard to)	
Filing Procedures in the Multipoint)	MM Docket No. 94-131
Distribution Service and in the)	
Instructional Television Fixed Service)	
)	
and)	
)	
Implementation of Section 309(j) of the)	PP Docket No. 93-253
Communications Act - Competitive Bidding)	

COMMENTS OF PEPPER & CORAZZINI, L.L.P.

Pepper & Corazzini, L.L.P., pursuant to Section 1.415 of the Commission's Rules, hereby submits its comments in response to the above-referenced Notice of Proposed Rulemaking ("NPRM") released December 1, 1994. The Commission is seeking public comment on proposals regarding new application processing procedures and ending the current filing freeze for the Multipoint Distribution Service ("MDS") and the Instructional Television Fixed Service ("ITFS"). These proposals include the use of a new electronic application form and a mandatory electronic filing procedure.

Pepper & Corazzini represents a large number of the wireless cable operators and licensees, both large and small and located in virtually every major market in the country, and has been involved in the industry since it was first established. In this regard, Pepper &

Corazzini has had extensive long-time involvement in preparing and filing applications in the MDS and ITFS. Pepper & Corazzini also has considerable experience in utilizing electronic technology in its practice. In 1994, for example, it was the first communications law firm in the country to establish a presence on the Internet. Accordingly, Pepper & Corazzini is pleased to have this opportunity to comment on the proposals regarding a new electronic filing procedure outlined in the NPRM.

The Commission envisions a filing process whereby electronic forms would be created on a personal computer through the use of Windows-based software, uploaded electronically through the use of Value Added Networks ("VANs") and then downloaded by the Commission in the correct format.^{1/} Admitted limitations to this system include the difficulty and expense of including associated maps or graphics in an electronic format along with the text of the application.^{2/}

The Commission proposes to adopt a new mandatory electronic application and filing process to replace the current form. The NPRM states that such a filing procedure would facilitate the process by eliminating manual entry of information into the Commission's computers and thereby maintaining accuracy throughout the processing procedure. The Commission also states that the electronic format would simplify access to the documents by the public, and would facilitate review of large amounts of applications by the staff through

^{1/} See, NPRM at Para. 19.

^{2/} Id. at Para. 20.

the use of specially-designed software. The Commission's stated goal is to eliminate as much paper as possible in the applications process.^{3/}

Pepper & Corazzini agrees with the Commission that such a system would facilitate the processing of applications and keep the backlog of applications to a manageable level. The growth of the wireless cable industry has placed a tremendous strain on the resources of the small staff of the current Video Services Division and the previous Domestic Radio Branch. Similarly, the industry has been severely hampered by the filing freeze resulting from an administrative backlog created by the multitude of applications filed in these services. Everything that can be done to avoid further freezes should be implemented and electronic filing represents an important step.

Pepper & Corazzini recommends, however, that the Commission proceed with caution in this area. Many other services are contemplating the use of electronic filing and the Commission should revive a proposal, originally put forth by the Common carrier Bureau, to organize a Federal Advisory Committee to recommend Commission-wide standards and procedures for all services. The proposals set forth in the instant NPRM are a radical shift from the previous paper filing procedures and many of the technical problems and questions that arise with such a system require both closer scrutiny and further consideration than can be addressed in the instant proceeding.

Moreover, should the Commission decide to immediately move forward with its proposal, electronic filing for wireless cable should be voluntary not mandatory. A voluntary system would allow the Commission, law firms and their clients an opportunity to make the

^{3/} Id.

necessary technical and financial adjustments in office technology, staff training, client education and allocation of necessary capital. The zeal of achieving a "paperless system" must be tempered by the limitations of technical and financial feasibility.

FORMATION OF A FEDERAL ADVISORY COMMITTEE

Currently, the Commission as a whole has over 20 electronic filing initiatives under consideration^{4/} and should consider resurrecting an earlier proposal of the Common Carrier Bureau ("CCB"), to organize a Federal Advisory Committee ("FAC") to assist the Mass Media Bureau -- and the entire Commission -- in the development and implementation of an electronic filing system.^{5/}

The CCB's proposal would have created a FAC under the Federal Advisory Committee Act, 5 U.S.C. Appendix 2 to provide recommendations to the Bureau in formulating rules and procedures with regard to:

- 1) designing the technical software necessary to receive, store and retrieve reports, applications and related filings; 2) studying the feasibility of establishing an on-line public access system to the database necessary to

^{4/} See, Remarks of Chairman Reed Hundt to the Connecticut Broadcasters Association Convention, October 28, 1994. See also, e.g. In the Matter of Reorganization of Parts 1, 2, 21, and 94 of the Rules to Establish a New Part 101 Governing Terrestrial Microwave Fixed Radio Services, 9 FCC Rcd. 6513, December 28, 1994, WT Docket No. 94-148; Report and Order. In the Matter of Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services, released September 9, 1994, CC Docket Nos. 92-115, 94-46, 93-116; Third Report and Order. In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act -- Regulatory Treatment of Mobile Services. Rules Relating to SMR Systems, released September 23, 1994, GEN Docket 93-252, PR Docket Nos. 93-144, 89-553.

^{5/} See, Public Notice, 9 FCC Rcd. 1293, released March 7, 1994, CC Docket No. 94-18.

accomplish this goal, using, where possible, readily available, off-the-shelf software; 3) analyzing and identifying the costs of implementing and maintaining such a system, and the feasibility of recovering such costs through user fees or other means, in conjunction with the President's goal of providing efficient and easy to use public access to government information, and 4) designing and developing a final request for proposal that the Commission could use in implementing an electronic filing system.^{6/}

The FAC proposal, however, has lain fallow because, in the meantime and as the Mass Media Bureau ("MMB") is aware, the Commission has shifted services such as MDS and ITFS out of CCB and into other bureaus such as MMB. The transition has left the CCB proposal stillborn.

Such a FAC as originally proposed would ensure uniformity in the development of electronic filing procedures before piece-meal requirements threaten the adoption of incompatible systems and protocols. The wireless cable services have suffered for too long under administrative burden.

Creation of a FAC would also ensure ample broad based private and government sector participation providing well-rounded and valuable expert advice regarding end-user needs and desires. Input should be sought from a variety of private and government entities such as the National Telecommunications and Information Administration ("NTIA") which has had considerable experience in developing proposals related to the development of a National Information Infrastructure. Similarly, the Securities and Exchange Commission has had considerable experience in developing its Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system.

^{6/} Id.

There is already evidence of strong industry backing for the creation of an electronic filing FAC as evidenced by the comments in that proceeding. All twenty comments filed, including those of Wireless Cable Association International, Inc., voiced unanimous support for a FAC composed of both public and private sector experts to provide recommendations.

The Commission, in the instant NPRM, has identified certain limitations to the proposed system including the problem of associating the text with complicated exhibits and graphics. In addition to this problem, however, there are other concerns discussed below that need to be more adequately addressed by a FAC:

Access

While law firms and technical firms file the majority of applications many smaller wireless cable applicants and licensees prepare their own applications. Utilizing a technically elaborate and expensive system would impose an undue burden on these smaller operators foreclosing access to the application process. One option a FAC might consider is a process by which paper forms would be converted to an electronically compatible format. Although the Private Radio Bureau has had success with its present system, the applications are not as extensive as those required for MDS and ITFS and all applications are presently filed through frequency coordinators.

Moreover, the software required to implement both creation and transmission of applications should utilize readily available, inexpensive off-the-shelf software. Indeed, Chairman Hundt has expressed his view that the Commission should give [applicants] a cheap way to use the information highway to file documents with the Commission.²⁷

²⁷ Chairman Reed Hundt, speech before the Networked Economy Conference, September 26, 1994.

Data Security

A FAC should also provide recommendations concerning the problem of computer security and the authentication of the identity of the parties filing in order to avoid forgeries and the use of aliases. Protection of confidential data and requests need to be addressed as well. Moreover, transmission validation is also an important factor to be considered to ensure that the filing received is identical to what the user sent. Date stamped validation should also be an important consideration. Input from other private and government sector organizations who have had previous experience in this area would be especially invaluable on this point.

Reliability

Various types of VANs and other types of networks need to be evaluated in light of the high levels of demand that would be created-- especially during high volume traffic times created during filing Windows. Backup systems also need to be evaluated in the event of equipment failure.

Reliability and costs associated with the development of software for use by the Commission in analyzing application submissions should also be considered.

"User Friendliness"

While the Commission proposes to use a Windows-based operating system, such software should accommodate cross platform environments such as Macintosh. Furthermore,

electronic mailboxes or file transfer areas should be easy to access with standard communication software and protocols.

AT THE OUTSET, THE PROCESS SHOULD BE VOLUNTARY

As the Commission is aware, legal and technical showings required for most applications in the MDS and ITFS require a collaborative effort between the client, a law firm and an engineering firm. In a "letter perfect" environment, this collaborative effort requires careful review of all application material by all parties. Mandating an electronic format may unduly burden that collaborative effort, at least at the outset, where clients and firms alike attempt to familiarize themselves with the process and the technology. The financial costs associated with an immediate mandatory electronic filing requirement would also be great in terms of acquiring the necessary technology and training staff.

With regard to educational institutions filing for ITFS facilities not supported by an operator, the Commission should likewise make the process voluntary. It is important to point out, however, that the financial costs are not the only burden an applicant faces. Many sophisticated operators as well as educational entities are simply not equipped to make a radical transition.

Electronic filing and transfer standards cannot be as readily instituted due to the financial and other costs associated with training and upgrading office technology. Accordingly, Pepper & Corazzini recommends that in the event the Commission rejects the idea of a FAC, a voluntary electronic procedure should be adopted for a specified time period to allow for a smooth and successful transition.

CONCLUSION

Accordingly, and for the reasons stated above, Pepper & Corazzini, L.L.P. respectfully urges creation of a Federal Advisory Committee to study the matter of electronic filing more closely to encourage Commission-wide uniformity of standards and the consideration of factors such as access, security, reliability, and "user friendliness". Moreover, if no FAC would be created, the Commission should encourage the use of an electronic format through a voluntary system.

Respectfully submitted,

PEPPER & CORAZZINI, L.L.P.

A handwritten signature in black ink, appearing to read "Michael J. Lehmkuhl", written over a horizontal line.

Robert F. Corazzini
Michael J. Lehmkuhl

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